

KIRKLAND & ELLIS LLP

AND AFFILIATED PARTNERSHIPS

655 Fifteenth Street, N.W.
Washington, D.C. 20005

Ilana Saltzbar
To Call Writer Directly:
(202) 879-5286
ilana.saltzbar@kirkland.com

(202) 879-5000

www.kirkland.com

Facsimile:
(202) 879-5200

December 31, 2014

**By Certified Mail, Return Receipt
Requested**

Contains Confidential Business Information

Daniel Reich
U.S. EPA Region IX
75 Hawthorne Street
ORC-2
San Francisco, California 94105-3901

Kathleen H. Johnson
Director, Enforcement Division
U.S. Environmental Protection Agency
Attn: Cyntia Steiner (ENF-2-1)
75 Hawthorne Street
San Francisco, California 94105-3901

Re: U.S. EPA Region IX Second Request for Information under Section 114
of the Clean Air Act

Dear Mr. Reich, Ms. Johnson, and Ms. Steiner:

I write to transmit Wal-Mart Transportation, LLC's ("Walmart") responses to requests 1-5 of the second information request it received from the U.S. Environmental Protection Agency ("EPA"), Region IX, under Section 114 of the Clean Air Act, 42 U.S.C. § 7414 ("Second Information Request" or "Second Section 114 Information Request") related to the California Air Resources Board's Truck and Bus regulation. The Region provided Walmart thirty (30) calendar days after receipt of the letter to submit its responses. *See* Second Information Request at 3, 5. Walmart received the Region's Second Information Request on December 1, 2014. With this submission, Walmart's response to the Second Information Request is timely made. Walmart's narrative responses are contained in Enclosure 1, identified as Walmart-EPA114IR-12312014-0000001-Walmart-EPA114IR-12312014-0000004. Responsive information and documents are contained in the Enclosure 2 DVD, identified as Walmart-EPA114IR-12312014-0000006-Walmart-EPA114IR-12312014-0000052.

KIRKLAND & ELLIS LLP

Mr. Reich, Ms. Johnson, and Ms. Steiner
December 31, 2014
Page 2

Walmart previously received and responded to a Section 114 Information Request from Region IX (the “first Information Request”) related to the same general subject matter, i.e., the California Air Resources Board’s Truck and Bus regulation, which was composed of 15 requests for information. On August 5, 2014, Walmart submitted its response to requests 14-15 of the first Information Request. Walmart submitted a supplemental response to requests 14-15, for the reasons stated in my transmittal letter, on September 10, 2014. Walmart submitted its response to requests 12-13 of the first Information Request on August 29, 2014. Finally, Walmart submitted its responses pertaining to requests 1-11 of the first Information Request on September 19, 2014.

Walmart interposes the following general objections and qualifications to this Second Section 114 Information Request.

First, pursuant to the requirements of 40 C.F.R. Part 2, subpart B, and in the manner proscribed by 40 C.F.R. § 2.203(b), Walmart requests confidential business information treatment for the information and documents designated as “Confidential Business Information” and the files so marked in the Enclosure 1 narrative responses and the Enclosure 2 DVD. The information included in this response marked “Confidential Business Information” is entitled to be treated as confidential business information pursuant to EPA regulations, *see, e.g.*, 40 C.F.R. § 2.208, and the standard articulated in *National Parks and Conservation Association v. Morton*, 498 F.2d 765 (D.C. Cir. 1974) (as clarified by *Critical Mass Energy Project v. Nuclear Regulatory Commission, et al.*, 975 F.2d 871 (D.C. Cir. 1992)), because its disclosure is likely to cause substantial competitive harm to Walmart. Walmart’s responses to EPA’s requests, as well as certain documents provided in response to such requests, contain highly sensitive information pertaining to, among other things, the contracts it negotiates with third party motor carriers, its proprietary list of third party motor carriers and related information, and its proprietary transportation management system, which Walmart designed and has not licensed to any other entity. This information is proprietary, not publicly disclosed, and would cause substantial competitive harm if revealed. Walmart has taken measures to ensure that, other than corporate affiliates and counsel or other confidential advisers, the information has remained confidential. Walmart requests that the pages marked “Confidential Business Information” be treated as confidential business information in perpetuity, or until Walmart informs EPA that the information is no longer confidential business information.

Second, Walmart objects to the Second Section 114 Information Request (including its instructions and definitions) to the extent it is vague, ambiguous, unduly burdensome, duplicative, premature, oppressive, and/or overbroad, including, without limitation, as to subject matter and/or time period, where compliance with specific requests would be unreasonably difficult as well as prohibitively expensive or time-consuming, and where the request is beyond

KIRKLAND & ELLIS LLP

Mr. Reich, Ms. Johnson, and Ms. Steiner
December 31, 2014
Page 3

the scope of EPA Region IX's authority to request information pursuant to Section 114 of the Clean Air Act, 42 U.S.C. § 7414.

Third, Walmart objects to the Second Section 114 Information Request (including the instructions and definitions) to the extent it seeks information or documents not within Walmart's possession, custody, or control. All responses are made on behalf of Walmart, and are limited to information and documents within Walmart's possession, custody, or control.

Fourth, Walmart's response is made without waiving, in any manner, Walmart's right to object to the use of any information or documents provided in response to these requests at any trial, evidentiary hearing, or other proceeding, on grounds of privilege, relevance, materiality, authenticity, hearsay, or any other ground permitted by any applicable law or rule.

Fifth, Walmart objects to the Second Section 114 Information Request (including the instructions and definitions) to the extent it seeks information or documents protected by the attorney-client privilege, the work product doctrine, the joint defense or common interest privilege, or any other applicable privilege, exemption, or immunity.

Sixth, Walmart objects to the Second Section 114 Information Request (including its instructions and definitions) to the extent it seeks or requires Walmart to compile and/or summarize information and data in a manner that is not maintained by Walmart in the ordinary course of business, and to transpose such information and data into a format that is not maintained by Walmart in the ordinary course of business.

Seventh, Walmart objects to the Second Section 114 Information Request to the extent that it purports to require Walmart to certify its response as specified in Enclosure 2 to the Information Request. *See* Second Section 114 Information Request at 5. *See also* Enclosure 2 to the Second Section 114 Information Request at 8. Walmart will certify its response subject to its qualifications and objections set forth in this letter. Additionally, Walmart has undertaken a good faith effort to conduct a reasonable search of non-privileged documents of the files and records of those individuals likely to have meaningful information responsive to the Second Section 114 Information Request as maintained in the ordinary course of business, and/or to apply a reasonable set of search terms to available collections of electronically stored information as maintained in the ordinary course of business reasonably likely to yield meaningful information responsive to a request. Walmart is not offering or promising to search for every document or piece of information that may exist in the possession, custody, or control of any of Walmart's employees and agents where any such items are not included within the results of a reasonable search as described above.

KIRKLAND & ELLIS LLP

Mr. Reich, Ms. Johnson, and Ms. Steiner
December 31, 2014
Page 4


Eighth, Walmart reserves the right to modify, amend, or supplement its response, which is made based on the current status of its knowledge, understanding, belief, and searches, for information and documents. This response is not intended as an admission or a representation that additional information or documents do not exist.

Accordingly, notwithstanding the foregoing, and without waiving any of the foregoing qualifications and objections, Walmart submits the following response to requests 1-5 of the Second Section 114 Information Request. The certification made by a company representative for responses 1-5 is enclosed with this letter, identified as Walmart-EPA114IR-12312014-0000005.

* * * * *

Please contact me if you have any questions regarding Walmart's responses to requests 1-5 of the Second Section 114 Information Request.

Sincerely,


Ilana Saltzbart

Enclosures

cc: Elizabeth O'Sullivan, Walmart
Mike Noble, Walmart
Emily Reynolds, Walmart